



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

SR-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

EPA Region 5 Records Ctr.



362935

Mr. David M. LeVan, President
Conrail Incorporated
20001 Market Street 19A
Philadelphia, PA 19101-1400

Re: Request for Information Pursuant to Section 104 of CERCLA
for the Toledo Tie Treatment Site in Toledo, Lucas County,
Ohio

Dear Mr. LeVan:

The U.S. Environmental Protection Agency (U.S. EPA or Agency) is investigating the Toledo Tie Treatment Site in Toledo, Lucas County, Ohio (the "Site"). This Site is located at the Arco Industrial Park in Toledo, Ohio on approximately 21 acres. The Site is bordered on the north and west by industrial and commercial property, on the east by the Toledo terminal railroad, and on the south by Conrail railroad tracks. Williams Ditch runs adjacent to the property on the west and north parameters. The U.S. EPA believes that Conrail Inc. is the successor to New York Central Railroad, and you may have information that is relevant to the investigation of contamination at the Site.

The Site originally encompassed 50 acres, most of which was owned by the Federal Creosoting Corporation from 1923 to 1959. Federal Creosoting Corporation operated a railroad tie treatment facility at the Site until 1959 when we understand the property was transferred to Federal Creosoting Corporation's successor, the American Creosoting Company. The American Creosoting Company continued operating the facility until 1962 when the property was transferred to the City of Toledo. The property, apparently unused by the City, was purchased by Arco Realty Inc., incorporated in 1969 to develop Arco Industrial Park. A number of on-site investigations have been conducted at the Site since 1990 which have shown that the on-site soils and sediments in Williams Ditch are contaminated with Creosot materials, including a variety of polycyclic aromatic hydrocarbons (PAHs). We believe that New York Central Lines Railroad may have jointly operated portions of the Creosoting Facility at the Toledo Tie Treatment Site.

The U.S. EPA asks that you provide information and documents relating to the Site. Please respond completely and truthfully to this Information Request and its questions in Attachment 2 within fourteen (14) days of your receipt of this letter. Instructions for completion of this response are in Attachment 1; definitions of terms used in this Information Request and its questions are in Attachment 3.

You may consider some information that we request as confidential. If you wish to assert a privilege of business confidentiality, you must respond to the question and advise U.S. EPA that you request that the Agency treat the response as confidential business information. Directions to assert a claim of business confidentiality are in Attachment 4.

The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et. seq., commonly referred to as CERCLA gives the U.S. EPA the authority to: 1) assess contaminated sites, 2) determine the threats to human health and the environment posed by a site, and 3) clean up those sites.

Under § 104(e)(2) of CERCLA, U.S. EPA has authority to gather information and to require persons to furnish information or documents relating to:

- a. The identification, nature and quantity of materials which have been or are generated, treated, stored or disposed of at a vessel or facility or transported to a vessel or facility;
- b. the nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at/or from a vessel or facility;
- c. the ability to pay the costs of the clean up.

This Information Request is directed to your company, its officers, directors and employees and requires you to provide information regarding affiliated/predecessor corporations' involvement with the Site.

Compliance with this Information Request is mandatory. Failure to respond fully and truthfully to each question within this Information Request and within the prescribed time frame can result in enforcement action by U.S. EPA pursuant to § 104(e)(5) of CERCLA, as amended. Failure to respond and failure to justify the non-response can result in similar penalties under this Section. Further, § 104(e)(5) authorizes the United States to seek penalties from a Federal Court of up to twenty-five thousand dollars (\$25,000) for each day of continued non-compliance. The U.S. EPA considers *non-compliance* to be not only failure to respond to the Information Request, but also failure to respond completely and truthfully to each question in the Information Request.

The provision of false, fictitious or fraudulent statements or misrepresentations may subject you or your firm to criminal penalties of up to ten thousand dollars (\$10,000) or up to five (5) years imprisonment, or both, under 18 U.S.C. 1001.

The U.S. EPA has the authority to use the information requested in an administrative, civil or criminal action.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

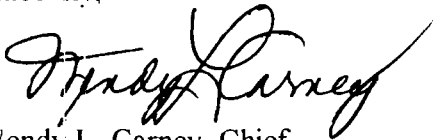
Return your response to U.S. EPA within fourteen (14) days of your receipt of this Information Request. Mail your response to:

Evette L. Jones
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd. (SR-6J)
Chicago, IL 60604-3590

If you have questions about a legal matter, please call our attorney, Randa Bishlawi at (312) 353-8917. Address technical questions to the Remedial Project Manager/On-scene Coordinator, Deborah Orr at (312) 886-7576. Address all other questions to Evette L. Jones at (312) 353-9483.

We appreciate your effort to respond fully and promptly to this Information Request.

Sincerely,



Wendy L. Carney, Chief
Remedial Response Branch #1

Attachment: 1. Instructions
 2. Questions
 3. Definitions
 4. Confidential Business Information
 5. Sanborn Map

ATTACHMENT 1

INSTRUCTIONS

- 1 Answer each question in this Information Request separately.
- 2 Precede each answer with the number of the question to which it corresponds.
- 3 In answering each question, identify all persons and contributing sources of information.
- 4 Although the U.S. EPA seeks your cooperation in this investigation, CERCLA requires that you respond fully and truthfully to this Information Request. False, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties under federal law. Section 104 of CERCLA, 42 U.S.C. Section 9604, authorizes the U.S. EPA to pursue penalties for failure to comply with that Section, or for failure to respond adequately to requests for submissions of required information.
- 5 In answering each question, identify all persons and contributing sources of information.
- 6 You must supplement your response to U.S. EPA if, after submission of your response, additional information should later become known or available. Should you find at any time after the submission of your response that any portion of the submitted information is false or misrepresents the truth, you must notify U.S. EPA as soon as possible.
- 7 For any document submitted in response to a question, indicate the number of the question to which it responds.
- 8 You must respond to each question based upon all information and documents in your possession or control, or in the possession or control of your current or former employees, agents, contractors, or attorneys. Information must be furnished regardless of whether or not it is based on your personal knowledge, and regardless of the source.
- 9 Your response must be accompanied by the following statement, or one that is substantially equivalent:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the

possibility of fine and imprisonment for known violations.

The individual who prepared the response or the responsible corporate official acting on behalf of the corporation must sign and date the statement, affidavit, or certification. Include the corporate official's full title.

10. If any of the requested documents have been transferred to others or have otherwise been disposed of, identify each document, the person to whom it was transferred, describe the circumstances surrounding the transfer or disposition, and state the date of the transfer or disposition.
11. All requested information must be provided notwithstanding its possible characterization as confidential information or trade secrets. If desired, you may assert a business confidentiality claim by means of the procedures described in Attachment 4.
12. The Toledo Tie Treatment Site includes lots in the Arco Industrial Park. When responding to the questions, please provide answers referencing the Lot number(s) and/or street addresses where you own or operate a business at the Arco Industrial Park.

ATTACHMENT 2

OWNERS/OPERATORS

1. Identify any persons who concurrently with the owner/operator exercised actual control or who held significant authority to control activities at the Site/facility/plant.
 - a. Partners or joint venturers;
 - b. any contractor, subcontractor, or licensor with any presence or activity on the Site; (service contractors, remediation contractors, management and operator contractors, licensor providing technical support to licensed activities);
 - c. any person subleasing land, equipment or space on site;
 - d. utilities, pipelines, railroads and any other person with activities and/or easements regarding the site;
 - e. major financiers and lenders;
 - f. any person who exercised actual control over any activities or operations on Site;
 - g. any person who held significant authority to control any activities or operations on site;
 - h. any person who had a significant presence or who conducted significant activities on site;
 - i. government entities that had proprietary (as opposed to regulatory) interest or involvement with regard to the activity on the Site/facility/plant.
2. Identify any legal equitable interest that you now have, or previously had in the Site. Include information regarding the nature of such interest; when, how, and from whom such interest was obtained; and when, how, and to whom such interest was conveyed. In addition, submit copies of all instruments evidencing the acquisition or conveyance of such interest.
3. At the time you found or operated the Site, did you know or have reason to know that any hazardous substance was disposed of on, or at the Site? Describe all investigations of the Site you undertook before finding the Site and all of the facts on which you base the answer to the preceding question.
4. Identify all prior owners of the Site. For each prior owner, further identify:

- a. The dates of ownership;
 - b. all evidence showing that they controlled access to the Site; and
 - c. all evidence that a hazardous substance, pollutant, or contaminant, was released or threatened to be released at the Site during the period that they owned the Site.
- 5 Identify all prior operators of the Site, including lessors, of the Site. For each such operator, further identify:
- a. The dates of operation;
 - b. the nature of prior operations at the Site;
 - c. all evidence that they controlled access to the Site;
 - d. all evidence that a hazardous substance, pollutant, or contaminant was released or threatened to be released at or from the Site and/or its solid waste units during the period that they were operating the Site.
- 6 Describe the nature of your activities or business at the Site, with respect to purchasing, receiving, processing, storing, treating, disposing, or otherwise handling hazardous substances or materials at the Site.
7. Did you ever move, excavate, use, purchase, generate, store, treat, dispose, or otherwise handle at the Site any hazardous substances, including creosot materials? If the answer to the preceding question is anything but an unqualified "no," identify:
- a. In general terms, the nature and quantity of the non-hazardous substances so transported, used, purchased, generated, stored, treated, excavated, moved, disposed, or otherwise handled;
 - b. the chemical composition, characteristics, physical state (e.g., solid, liquid) of each hazardous substance so transported, used, purchased, generated, stored, treated, excavated, moved, disposed, or otherwise handled;
 - c. the persons who supplied you with each such hazardous substance;
 - d. how each such hazardous substance was excavated, moved, used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you;
 - e. when each such hazardous substance was excavated, moved, used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you;

- f. where each such hazardous substance was excavated, moved, used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you;
 - g. the quantity of each such hazardous substance excavated, moved, used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you.
- 8. Identify all federal, state and local authorities that regulated the Site Operator and/or that interacted with the Site Operator. Your response is to address all interactions and, in particular, all contacts from agencies/departments that dealt with health and safety issues and environmental concerns.
- 9. Describe all occurrences associated with violations, citations, deficiencies, and/or accidents concerning the Site. Provide copies of all documents associated with such an occurrence.
- 10. Provide a list of all local, state and federal environmental permits ever granted for the Facility or any part thereof (e.g., RCRA permits, NPDES permits, etc.).
- 11. Did the Facility ever file a Hazardous Waste Activity Notification under the Resource Conservation and Recovery Act (RCRA)? If so, provide a copy of such notification.
- 12. Did the Facility ever have "interim status" under the Resource Conservation or Recovery Act (RCRA)? If so, and the Facility does not currently have interim status, describe the circumstances under which the Facility lost interim status.
- 13. Provide information about the Site, including, but not limited to, the following:
 - a. Property boundaries, including a written legal description;
 - b. location of underground utilities (telephone, electrical, sewers, water main, etc.);
 - c. surface structures (e.g., buildings, tanks, etc.);
 - d. groundwater wells, including drilling logs;
 - e. storm water drainage system, and sanitary sewer system, past and present, including septic tank(s), subsurface disposal field(s), and other underground structures, and where, when and how such systems are emptied;
 - f. any and all additions, demolitions or changes of any kind on, under or about the Site, its physical structures or to the property itself (e.g., excavation work) and any planned additions, demolitions or other changes to the site;
 - g. all maps and drawings of the Site in your possession.

14. Provide all reports, information or data related to soil, water (ground and surface), or air quality and geology/hydrogeology at and about the Site. Provide copies of all documents containing such data and information, including both past and current aerial photographs as well as documents containing analysis or interpretation of such data.
15. Describe the acts or omissions of any persons other than your employees, agents or those persons with whom you had a contractual relationship, that may have caused the release or threat of release of hazardous substances at the Site and damages relating therefrom and identify such persons. In addition:
 - a. Describe all precautions that you took against foreseeable acts or omissions of any such third parties and the consequences that could foreseeably result from such acts or omissions;
 - b. describe the care you exercised with respect to the hazardous substances found at the Site.
16. Identify all past and present solid waste management units, including units containing creosot (e.g., waste piles, landfills, surface impoundments, waste lagoons, waste ponds or pits, tanks, container storage areas, etc.) on the Site. For each such solid waste management unit, provide the following information:
 - a. A map showing the unit's boundaries and the location of all known solid waste management units whether currently in operation or not. This map should be drawn to scale, if possible, and clearly indicate the location and size of all past and present units;
 - b. the type of unit (e.g., storage area, landfill, waste pile, etc.), and the dimensions of the unit;
 - c. the dates that the unit was in use;
 - d. the purpose and past usage (e.g., storage, spills containment, etc.);
 - e. the quantity and types of materials (hazardous substances and any other chemicals) located in each unit;
 - f. the construction (materials, composition), volume, size, dates of cleaning, and condition of each unit;
 - g. if unit is no longer in use, how was such unit closed and what actions were taken to prevent or address potential or actual releases of waste constituents from the unit.

17. Describe the conditions of the physical plant facility at the Site during the years you owned or operated at the Site. Your response is to include, but should not be limited to, the status of equipment (operating or dormant), general condition of the facility (e.g., leaking pipes, corroded drain or new piping installed), quality of maintenance (e.g., equipment in disrepair or inspected monthly), adherence to procedures (improper handling of chemicals, incomplete/absent policies, quality of supervision) and management of the plant.
18. Identify all leaks, spills, or releases into the environment of any hazardous substances, pollutants, or contaminants that have occurred at or from the Site? In addition, identify:
 - a. When such releases occurred;
 - b. how the releases occurred (e.g. when the substances were being stored, delivered by a vendor, transported or transferred (to or from any tanks, drums, barrels, or recovery units), and treated);
 - c. the amount of each hazardous substances, pollutants, or contaminants so released;
 - d. where such releases occurred;
 - e. any and all activities undertaken in response to each such release or threatened release, including the notification of any agencies or governmental units about the release;
 - f. any and all investigations of the circumstances, nature, extent or location of each release or threatened release including, the results of any soil, water (ground and surface), or air testing undertaken;
 - g. All persons with information relating to these releases.
19. Has any contaminated soil ever been excavated or removed from the Site? Unless the answer to the preceding question is anything besides an unequivocal "no," identify:
 - a. Amount of soil excavated;
 - b. Location of excavation;
 - c. Manner and place of disposal and/or storage of excavated soil;
 - d. Dates of soil excavation;
 - e. Identity of persons who excavated or removed the soil;

- f. Reason for soil excavation;
 - g. Whether the excavation or removed soil contained hazardous substances and why the soil contained such substances;
 - h. All analyses or tests and results of analyses of the soil that were removed from the Site;
 - i. All persons, including contractors, with information about (a) through (h) of this request.
20. Provide information and documentation concerning all inspections, evaluations, safety audits, correspondence and any other documents associated with the conditions, practices, and/or procedures at the Site concerning insurance issues.
21. Are you or your consultants planning to perform any investigations of the soil, water (ground or surface), geology, hydrology or air quality on or about the Site? If so, identify:
- a. What the nature and scope of these investigations will be;
 - b. The contractors or other persons that will undertake these investigations;
 - c. The purpose of the investigations;
 - d. The dates when such investigations will take place and be completed;
 - e. Where on the Site such investigations will take place.
22. Describe the waste generation history of the Site, including all controlled and uncontrolled releases of compounds, reactants, products, waste, and any other substance. In your response list all releases by compound, the amount of release and the circumstances surrounding said release during the operation of the railroad tie treatment facility at the Site.
23. Describe the waste handling and disposal history of the Site, for the railroad tie treatment facility, including but not limited to transportation, shipping and/or receiving, storage, manufacturing, research, quality control, waste containment, and waste disposal facilities. This description is to include the names, addresses and activities of waste disposal contractors, and copies of all supporting documents (manifests, invoices, contracts, etc.).

24. Describe all instances where the Site accepted waste from any company or person, or where the Site accepted substances which could be considered hazardous and not useful in their present form. Your response is to include the following:
- a. a description of the waste sent to the Site;
 - b. the types and quantity of the waste sent to the Site;
 - c. the name of the person or company who transported the waste to the Site;
 - d. the name of the person or company who sent the waste to the Site;
 - e. the names of the person or company who originated the waste sent to the Site;
 - f. the date(s) such wastes were sent to the Site;
 - g. the state (i.e., liquid, solid, or gaseous) of the wastes sent to the Site, and the manner in which the wastes were stored or disposed (i.e., drummed or uncontained, placed in lagoons, landfills, placed in piles, etc.);
 - h. a description of what the Site would do with the waste once received;
 - i. the reason which led you to believe that the waste received was indeed waste when received by the Site Operator.
 - j. the names of all customers who would receive a finished product which was composed of any waste described in this question.
25. Describe all instances where the Site accepted substances which could be considered not hazardous in their present form. Your response is to include the following:
- a. A description of the substances sent to the Site;
 - b. the types and quantity of the substances sent to the Site;
 - c. the name of the person or company who transported the substances to the Site;
 - d. the name of the person or company who sent the substances to the Site;
 - e. the names of the person or company who originated the waste sent to the Site;

- f. the date(s) such substances were sent to the Site;
- g. the state (i.e., liquid, solid, or gaseous) of the substances sent to the Site, and the manner in which the substances were stored or disposed (i.e., drummed or uncontained, placed in lagoons, landfills, placed in piles, etc.);
- h. a description of what the Site Operator would do with the substances once received;
- i. the reason which led you to believe that the substances received were not useful in the form received by the Site Operator;
- j. the names of all customers who would receive a finished product which was composed of any substances described in this question.

26. If any of the documents solicited in this Information Request are no longer available, please indicate the reason why they are no longer available. If the records were destroyed, provide us with the following:

- a. The document retention policy between 1969 to present;
- b. a description of how the records were destroyed (burned, trashed, etc.) and the approximate date of destruction;
- c. a description of the type of information that would have been contained in the documents;
- d. the name, job title and most current address known by you of the person(s) who would have produced these documents, the person(s) who would have been responsible for the retention of these documents, the person(s) who would have been responsible for the destruction of these documents, and the person(s) who had and/or still may have the originals or copies of these documents;
- e. the names and most current address of any person(s) who may possess documents relevant to this inquiry.

ATTACHMENT 3

Definitions

- 1 As used in this letter, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa.
- 2 The term “*you*” or “*Respondent*” shall mean officers, directors, managers, employees, contractors, trustees, predecessors, successors, assigns, subsidiaries, and agents.
- 3 The term *person* as used herein includes, in the plural as well as the singular, any natural person, firm, contractor, unincorporated association, partnership, corporation, trust or governmental entity, unless the context indicates otherwise.
- 4 *The Site* referenced in these documents shall mean the Toledo Tie Treatment Site located in Toledo, Ohio.
- 5 The term *hazardous substance* shall have the same definition as that contained in Section 101(14) of CERCLA, including any mixtures of such hazardous substances with any other substances, including petroleum products.
- 6 The term, *pollutant or contaminant*, shall have the same definition as that contained in Section 101(33) of CERCLA, and includes any mixtures of such pollutants and contaminants with any other substances.
- 7 The term *release* shall have the same definition as that contained in Section 101(22) of CERCLA, and means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant.
8. The term *identify* means, with respect to a natural person, to set forth the person's full name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
9. The term *identify* means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
10. The term *identify* means, with respect to a document, to provide its customary business

description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject-matter.

11. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, 40 C.F.R., Part 300 or 40 C.F.R., Part 260-280, in which case, the statutory or regulatory definitions shall apply.

CONFIDENTIAL BUSINESS INFORMATION

You may consider some of the information confidential that the U.S. Environmental Protection Agency (U.S. EPA or Agency) is requesting. You can not withhold information or records upon that basis. The Regulations at 40 C.F.R. Part 2, § 200 **et seq.** requires that the U.S. EPA afford you the opportunity to substantiate your claim of confidentiality before the Agency makes a final determination on the confidentiality of the information.

You may assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. 2.203(b). Information covered by such a claim will be disclosed by the U.S. EPA only to the extent and only by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. [See 41 Federal Register 36902 **et seq.** (September 1, 1976); 43 Federal Register 4000 **et seq.** (December 18, 1985).] If no such claim accompanies the information when the U.S. EPA receives it, the information may be made available to the public by the Agency without further notice to you. Please read carefully these cited regulations, together with the standards set forth in Section 104(e)(7) of Comprehensive Environmental Response Compensation Liability Act (CERCLA), because, as stated in Section 104(e)(7) (ii), certain categories of information are not properly the subject of a claim of confidential business information.

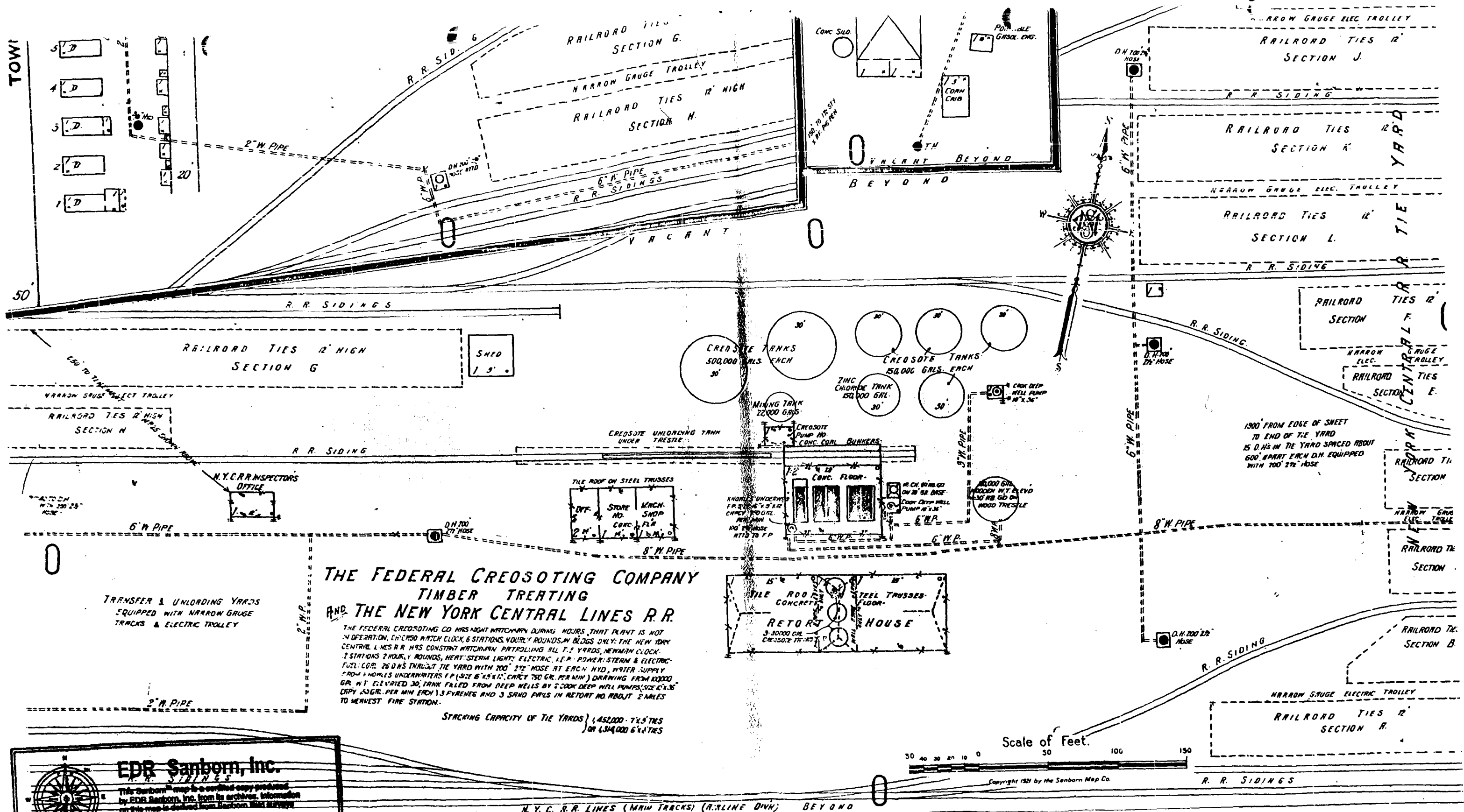
If you wish the U.S. EPA to treat the information or record as "confidential", you must advise the U.S. EPA of that fact by following the procedures described below, including the requirement for supporting your claim of confidentiality. To assert a claim of confidentiality, you must specify which portions of the information or documents you consider confidential. Please identify the information or document that you consider confidential by page, paragraph and sentence. You must make a **separate** assertion of confidentiality for **each response** and **each document** that you consider confidential. Submit the portion of the response that you consider confidential in a separate, sealed envelope. Mark the envelope "confidential", and identify the number of the question to which it is the response.

For each assertion of confidentiality, identify:

1. The period of time for which you request that the Agency consider the information confidential, e.g., until a specific date or until the occurrence of a specific event;
2. The measures that you have taken to guard against disclosure of the information to others;
3. The extent to which the information has already been disclosed to others and the precautions that you have taken to ensure that no further disclosure occurs;
4. Whether the U.S. EPA or other federal agency have made a pertinent determination on the confidentiality of the information or document. If an agency has made such a determination, enclose a copy of that determination.

5. Whether disclosure of the information or document would be likely to result in substantial harmful effects to your competitive position. If you believe such harm would result from any disclosure, explain the nature of the harmful effects, why the harm should be viewed as substantial, and the causal relationship between disclosure and the harmful effect. Include a description of how a competitor would use the information.
6. Whether you assert that the information is voluntarily submitted as defined by 40 C.F.R. 2.201(I). If you make this assertion, explain how the disclosure would tend to lessen the ability of the U.S. EPA to obtain similar information in the future.
7. Any other information that you deem relevant to a determination of confidentiality.

Please note that pursuant to 40 C.F.R. 2.208(e), **the burden of substantiating confidentiality rests with you**. The U.S. EPA will give little or no weight to conclusory allegations. If you believe that facts and documents necessary to substantiate confidentiality are themselves confidential, please identify them as such so that the U.S. EPA may maintain their confidentiality pursuant to 40 C.F.R. 2.205(c). If you do not identify this information and documents as "confidential", your comments will be available to the public without further notice to you.



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